HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1224 (S/S) year 2003
Durya Dutt Gurrani, Teacher
Vs.
Vice Chancellor, Sampurnanand,
Sanskrit University,
Varnasi, and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 13.10.2003

Initial of Judge

In the High court of Uttaranchal at Nainital.

Court No.6

Civil Writ Petition No. 1224 of 2003 (S/S)

Durga Dutt Gurrani, Teacher
Shri Mahadev Giri Sanskrit Mahavidhalaya
Haldwani Dist. Nainital .... Petitioner.

Vs.

1. Vice Chacellor, Sampurnanand,
Sanskrit University, Varanasi,
Uttar Pradesh

2. Inspector, Sanskrit Schools, Nainital

3. Manager, Committee of Management
Sri Mahadev Giri Sanskrit Mahavidhalaya
Haldwani Dist. Nainital

4. Dr. Narayan Dutt Joshi, Teacher
Sri Mahadev Giri Sanskrit Mahavidhalaya
Haldwani Dist. Nainital …Respondents.

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has challenged the order dated 3.7.2003 appointing the respondent no. 4 as officiating Principal of Sri Mahadev Giri Sanskrit Mahavidyalay, Haldwani Dist. Nainital affiliated to Supurnamed Sanskrit University.

Brief facts giving rise to the present Writ Petition are that the petitioner was appointed on the substantive capacity on 24.8.1974 as Asstt. Teacher. The petitioner has given the chart in para 6 of the petition, which is quoted below:

Name of the teacher	*Date of birth*	*Date of substantive appointment*
Sri Durga Dutt Gurrani	*6.5.1948*	*24.8.1974*
Sri Bhuwan Chandra	*12.10.1951*	*26.9.1975*
Sri Narayan Dutt Joshi	*1.9.1956*	*22.10.1979*

The college concerned is governed by the statutes known as U.P. State Universities Act 1973 and the affairs of the college are regulated by the first statutes of the Sampurananamd Sanskrit Vishvavidyalaya, Varanasi framed under section 50 of the U.P. State Universities Act, 1973.

Chapter 18 part 2 of the Statutes provides the appointment of the Principal and teachers of the affiliated collages according to the seniority. Clause 18.10. to 18.16 is quoted below:

"18.10- *The following rules shall be followed in determining the seniority of Principals and other teachers of affiliated colleges:-*

(a) the Principal shall be deemed senior than other teacher in the College;

(b) the Principal of an affiliated college of a higher category shall be deemed senior to the Principal of an affiliated college of a lower category;

(c) a teacher of a particular cadre of a college of higher category shall be deemed senior to a teacher of such cadre of a college of a lower category;

***(d)** the seniority of Principals and teachers shall be determined as amongst the Principals and teachers of the affiliated college of the same category;*

(e) ***the seniority of Principals and teachers of the affiliated colleges shall be determined by the length of continuous service from the date of appointment in substantive capacity;***

(f) service in each capacity (for example, as Principal or as a teacher) shall be counted from the date of taking charge pursuant to substantive appointment;

(g) service in a substantive capacity in another college of the same category affiliated to the University shall be added in his length of service provided that the service in such other college is in the same cadre and in the same grade;

(h) among the teachers of the colleges of the same category a teacher in the higher cadre or grade shall be deemed senior to a teacher in a lower cadre or grade;

(i) the period of leave for service elsewhere shall not count for seniority.

***Section 4 (0) 18.11**. Where more than one teachers are entitled to count the same length of continuous service, the relative seniority of such teachers shall be determined as below;*

(i) in the case of Principals the length of substantive service as a Principal of a College lower category shall be taken into consideration;

(ii) in the case of teachers, the length of substantive service in the same cadre in a College of a lower category shall be taken into consideration;

(iii) if two or more Principals or teachers are entitled to count the same length of substantive service and their relative seniority can not be determined under any of the foregoing provisions, such seniority shall be determined according to seniority in age.

18.12 *Where the seniority of a person as Principal or teacher to be determined for the purpose of representation or appointment as such on a University authority, the length of service only as Principal or such teacher shall be taken into account and where two or more Principals or teachers are entitled to count the same length of substantive service for the purpose, their seniority shall be determined according to seniority in age.*

18.13 *(1) When two or more persons are appointed as teachers in the same department or in the same subject, their relative seniority shal be determined in order of preference or merit in which their names were recommended by the Selection Committee.*

(2) If the seniority of two or more teacher has been determined under clause (1), the same shall be communicated to the teachers concerned by the management before their appointment.

18.14. *All disputes regarding seniority of teachers (other than the Principal) of the same colleges shall be decided by the Principal of the college who shall give reasons for the decision. Any teacher aggrieved by the decision of to Principal may prefer an appeal to the Vice-Chancellor within 60 days from the date of communication of such decision to the teacher concerned. If the Vice-Chancellor disagrees from the Principal, he shall give reasons for such disagreement.*

18.15 *All the dispute regarding seniority of Principals of affiliated college shall be decided by the Vice-Chancellor who shall give reasons for the decision. Any Principals aggrieved by the decision of the Vice-Chancellor may prefer an appeal to the Executive council within sixty days from the date of communication of such decision to the Principal concerned. If the Executive Council disagrees with the Vice-Chancellor, it shall give reasons for such disagreement."*

Sub-clause 'e' of clause 18.10 is relevant for the purpose of the petitioner which provides that the seniority of the Principal and teachers of the affiliated colleges shall be determined by the length of continuous service from the date of appointment in substantive capacity.

According to the petitioner as will appear from the chart, the seniority of the petitioner has to be counted from 24.8.1974 as he was appointed in the substantive capacity on 24.8.1974.

According to the grievance of the petitioner, the petitioner was given the charge of officiating Principal after retirement of Dr. Bhuwan Chandra Tripathi in June, 2003. Subsequently, another order was passed 3.7.2003 in favor of Dr. Narayan Dutt Joshi as officiating Principal of the collage.

The grievance of the petitioner is that the order dated 3.7.2003 cannot be passed as according to the seniority, the petitioner is the senior most. The petitioner has already made a representation on 17.8.2003 inviting the attention of the Management. According to the petitioner, the same has not yet been disposed of.

The question with regard to the seniority of the teacher in the same department is contained under 18.12 and 18.13. Sub-clause 2 of 18.13 provides that if the seniority of the two or more teachers have to be determined, the same shall be determined in order of preference.

In the present case, the petitioner was earlier communicated on the retirement of Sri Bhuwan Chandra Tripathi that he is the senior most teacher and as such he was given the officiating charge. Later on 3.7.2003, the same was given to the respondent No. 4. The question in the present case as to whether the petitioner is the senior or the respondent is the senior has to be determined by the Vice-Chancellor under 18.15, which is quoted below:

> *"18.15. All disputes regarding seniority of Principals of affiliated colleges shall be decided by the Vice-Chancellor who shall give reasons for the decision. Any Principal aggrieved by the decision of the Vice-Chancellor may prefer an appeal to the Executive Council within sixty days from the date of communication of such decision to the Principal concerned. If the Executive Council disagrees with the Vice-Chancellor, it shall give reasons for such disagreement."*

The present Writ Petition, therefore, is not maintainable on the ground of alternative remedy as the dispute with regard to the seniority of the teacher of the affiliated collages has to be decided by the Vice-Chancellor under 18.15 as stated above.

Since the petitioner has already made a representation claiming his seniority for officiating Principal and the same is pending before the respondent 3, the management is directed to forward the same to the Vice-Chancellor for deciding the dispute in accordance with clause 18.15 of the First Statutes as stated above. Management shall forward the same within a week and the same shall be decided by the Vice-Chancellor within a period of one month from the date of the filing of the certified copy of the order.

Since the alternative remedy under clause 18.15 of the First Statutes is already available to the petitioner for adjudication of the dispute by the Vice-Chancellor, the Writ Petition is not maintainable.

The Writ Petition therefore is disposed of with the direction that the Vice-Chancellor shall hear the parties and decide the dispute in accordance with law within a period of one month from the date of issue of the order.

(Rajesh Tandon,J.)

Dated: 13.10.2003
Rawat